IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 21352 of 2007(P)

PETITIONER:

ABDUL RASHEED K.K.,
KARIMBARAKUNDATHIL, AVILORA, KODUVALLY,KOZHIKODE.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM,
THIRUVANANTHAPURAM.

4. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
DISTRICT OFFICE, KOZHIKODE.

BY STANDING COUSNEL SRI.P.C.SASIDHARAN

GOVT. PLEADER SMT.M.R.SREELATHA.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.21352/2007)

EXT.P1: TRUE COPY OF NOTIFICATION DT. 12/11/2002.

EXT.P2: TRUE COPOY OF INTERVIEW CARD DT. 9/3/2005.

EXT.P3: TRUE COPY OF RELEVANT PAGE OF RANK LIST.

EXT.P4: TRUE COPY OF REPRESENTATION DT. 5/5/2007.

EXT.P5: TRUE COPY OF ADVICE MEMO DT. 20/4/2004.

EXT.P6: TRUE COPY OF ADVICE MEMO DT. 19/6/2007.

EXT.P7: TRUE COPY OF REPORT IN MATHRUBHUMI DAILY DT. 16/6/2007.

RESPONDENTS' EXHIBITS:

EXT.R3(A): TRUE COPY OF WILLINGNESS SUBMITTED BY PETR.

EXT.R3(B): TRUE COPY OF COMMUNICATION ISSUED BY COMMISSION DT. 24/7/2007.

A.K. Basheer, J.

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W.P(C) No. 21352 of 2007

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Dated this the 14th day of August, 2007.

J U D G M E N T

Petitioner had applied for the post of High School Assistant (Malayalam) in the Department of Education in response to Ext.P1 notification issued by the Kerala Public Service Commission. After completion of the selection process, petitioner was included in the ranked list prepared by the Commission for Kozhikode District. He was placed at serial No.17. The list came into force with effect from June 29, 2005.

2. The Commission issued Ext.P6 communication to the petitioner on June 19, 2007 informing him that he had been advised for appointment as HSA (Malayalam) in Maniyur Grama Panchayat Higher secondary School. It is contended by the petitioner that a person like him who had been placed comparatively very high in the ranked list ought to have been given appointment in a Government school, rather than in a Panchayat school which is treated as a aided school under the Kerala Education Act and the Rules. The teachers in an aided school are indisputably in a disadvantageous position, especially in the event of fall in division. The teachers in Government schools on the contrary are put on a comparatively safer pedestal. It is also contended by the petitioner that Ext.P1 notification did not indicate that the selected candidates were likely to be appointed in a Panchayat school. Petitioner had applied for the post under the bona fide belief and impression that he would get an appointment, if selected, in a Government school.

3. Therefore petitioner prays for a declaration that he is entitled to be appointed as High School Assistant in any one of the vacancies in Government schools in Kozhikode District. He further prays that a writ of mandamus or such other appropriate writ, order or direction be issued to the respondents to advise and appoint him in any of the vacancies available in Government schools in Kozhikode District.

4. In the counter affidavit filed on behalf of the Commission it is averred that the candidates including the petitioner who were invited for interview were informed that they were liable to be appointed in Panchayat schools also. Petitioner had in fact given his willingness to be appointed in a Panchayat school as can be seen from Ext.R3(a). It is also contended that Ext.R3(a) was obtained from the petitioner since at the time of Ext.P1 notification the Additional Functions Act entrusting appointment of teachers in Panchayat schools was not promulgated and therefore the clause indicating that the selected candidates were liable to be appointed in Panchayat schools also was not incorporated in Ext.P1 notification. In all the later notifications, the Commission has been incorporating such a clause. Since the petitioner had given Ext.R3(a) willingness at the time of interview, he was advised for appointment in a Panchayat school. It is thus contended by the Commission that it is not now idle for the petitioner to raise a protest against his appointment in a Panchayat school.

5. In response to the above contention raised by the Commission

it is pointed out by the learned counsel that in all similar situations where the Commission had not notified that the selected candidates would be liable to be appointed in Panchayat schools also, apart from Government schools, the Commission had been issuing notices to the individual candidates eliciting their willingness. The candidates were being given 15 days' time to think about the option available to them and take a considered decision in the matter. Ext.P5 is stated to be one such notice issued to another candidate in a similar situation. It is the contention of the learned counsel that such a notice will enable the candidate to think about the pros and cons of accepting appointment in a Panchayat school. In the case of the petitioner such an opportunity was not given. It is admitted by the petitioner that he had put his signature in Ext.R3(c) in the course of the interview. Understandably petitioner was very nervous and perplexed. He did not know the implications of what he was asked. He had been waiting for a job for the last several years. Ext.P1 notification was issued in 2002. The written examination was conducted in the year 2004. He was invited for the interview in 2005. In the course of the interview, Ext.R3(a), which is a cyclostyled form, was thrust in front of him. Petitioner did not get any time to contemplate or ponder over the option put across the table by the members of the interview Board. Therefore he had put his signature in Ext.R3(a) out of perplexity and in a state of confusion. He had even forgotten about it.

6. Learned counsel further submits that petitioner had submitted Ext.P4 application before the Commission on May 5, 2007 when the Commission had started issuing advice memos to the candidates from the ranked list. In Ext.P4 the petitioner had requested the Commission to give him appointment in a Government school. But in spite of the above request, petitioner was advised for appointment in a Panchayat school.

7. It is pertinent to note that the Commission had not indicated in Ext.P1 notification that the selected candidates were likely to be appointed in Panchayat schools also, apart from Government schools. It is not disputed by the Commission that consent/willingness of candidates used to be ascertained and obtained in cases where they were likely to be appointed in Panchayat schools. Ext.P5 communication issued to another candidate in a similar situation will show that that candidate was given 15days' time to think about the option. Such an opportunity was admittedly denied to the petitioner. It may be true that the Commission had obtained Ext.R3(a) from the petitioner at the time of interview in the year 2005. There is considerable force in the contention raised on behalf of the petitioner that he might have signed in Ext.R3(a) without understanding the full implications , particularly since he was sitting in front of the interview Board.

8. Having regard to the peculiar facts and circumstances of the

case, I am of the view that the Commission cannot bank on Ext.R3(a) in support of its contention that petitioner is liable to be appointed in a Panchayat school. Petitioner ought to have been given notice as in the case of Ext.P5 giving him some reasonable time to think about the pros and cons of the option. In that view of the matter, I am satisfied that petitioner's request to give him appointment in a Government school, particularly in view of the high rank obtained by him in the list has to be considered by the Commission favourably. Ext.P4 application submitted by the petitioner ought to have been considered by the Commission favorably.

9. Therefore the writ petition is allowed. The Commission is directed to recall Ext.P6 advice memo and issue a fresh advice to the petitioner for appointment in one of the available vacancies in any of the Government High schools in Kozhikode District in accordance with the relevant Rules. This shall be done as expeditiously as possible at any rate within one month from the date of receipt of a copy of this judgment.

Writ Petition is disposed of in the above terms.

A.K. Basheer
Judge.

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